

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-21-43-3-SLP
)	
OSBALDO LOPEZ RODRIGUEZ,)	
)	
Defendant.)	

ORDER

Before the Court is Defendant's pro se Motion for Reduction of Sentence [Doc. No. 169]. Defendant seeks a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 821 to the United States Sentencing Guidelines (U.S.S.G.). The Government has filed a Response [Doc. No. 171] and opposes the requested relief. The Court has further reviewed the Probation Office's Preliminary Report for Consideration of Sentence Reduction Based on Amendment 821 [Doc. No. 170]. For the reasons that follow, Defendant's Motion to Reduce Sentence is DISMISSED.

I. Background

On July 12, 2021, Defendant pleaded guilty to one count of possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1). *See* Doc Nos. 100–103. On June 8, 2022, the United States Probation Office filed its Final Presentence Investigation Report (PSR). Doc. No. 129. The PSR calculated a base offense level of 38. PSR ¶ 33. After all relevant adjustments were applied, the PSR calculated a total offense level of 39. *Id.* ¶ 45.

The PSR calculated a total criminal history score of zero for Defendant, placing him in a criminal history category of I. *Id.* ¶¶ 48–49. Combining Defendant’s total offense level of 39 and criminal history category of I, the PSR calculated a guideline range of 262 to 327 months’ imprisonment. *Id.* ¶ 74.

On August 23, 2022, the Court adopted the PSR without change, varied downward, and sentenced Defendant to 168 months’ imprisonment. Doc. Nos. 150–151.

On June 24, 2024, Defendant filed the pending Motion. He seeks a reduction pursuant to 18 U.S.C. § 3582(c)(2) based on Amendment 821 on grounds that he is a zero-point offender.

II. Standard

“A district court does not have inherent authority to modify a previously imposed sentence; it may do so only pursuant to statutory authorization.” *United States v. Mendoza*, 118 F.3d 707, 709 (10th Cir. 1997). One source of statutory authorization is section 3582 which allows for a possible reduction for a defendant “who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2).

Section 3582(c)(2) “establishes a two-step inquiry.” *Dillon v. United States*, 560 U.S. 817, 826 (2010). “At step one, § 3582(c)(2) requires the court to follow the Commission’s instructions in [U.S.S.G.] § 1B1.10 to determine the prisoner’s eligibility for a sentence modification and the extent of the reduction authorized.” *Id.* at 827. “At step two of the inquiry, § 3582(c)(2) instructs a court to consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by

reference to the policies relevant at step one is warranted in whole or in part under the particular circumstances of the case.” *Id.*

Here, Defendant seeks a sentence reduction pursuant to Amendment 821 to the U.S.S.G. which took effect on November 1, 2023, and applies retroactively. Part A of Amendment 821 limits the criminal history impact of “status points,” and Subpart 1 of Part B of Amendment 821 creates a new guideline, § 4C1.1, that provides for a decrease of two offense levels for “Zero-Point Offenders.” *See* U.S. Sent’g Guidelines Manual app. C Supp., amend. 821 (U.S. Sent’g Comm’n 2023). With respect to the guideline for zero-point offenders, a defendant is eligible for a two-level reduction in his offense level if he or she meets all eleven of the listed criteria.¹

¹ Those eleven criteria are:

- (1) the defendant did not receive any criminal history points from Chapter Four, Part A;
- (2) the defendant did not receive an adjustment under § 3A1.4 (Terrorism);
- (3) the defendant did not use violence or credible threats of violence in connection with the offense;
- (4) the offense did not result in death or serious bodily injury;
- (5) the instant offense of conviction is not a sex offense;
- (6) the defendant did not personally cause substantial financial hardship;
- (7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (8) the instant offense of conviction is not covered by § 2H1.1 (Offenses Involving Individual Rights);
- (9) the defendant did not receive an adjustment under § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) or § 3A1.5 (Serious Human Rights Offense);
- (10) the defendant did not receive an adjustment under §3B1.1 (Aggravating Role); and
- (11) the defendant was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848

U.S.S.G. § 4C1.1(a).

III. Analysis


Applying Amendment 821 (Part B) to Defendant as a zero-point offender, his offense level is reduced from 39 to 37. Combining Defendant's new total offense level of 37 with his original criminal history category of I, his amended guideline range is 210 to 262 months' imprisonment. Because Defendant's current sentence of 168 months is already less than his amended guideline range, Defendant is ineligible for a sentence reduction. *See* U.S.S.G. § 1B1.10(b)(2)(A)-(B); *see also* *Dillon*, 560 U.S. at 827.

IV. Conclusion

For the reasons set forth above, the Court lacks jurisdiction to reduce Defendant's sentence. *See United States v. White*, 765 F.3d 1240, 1242 (10th Cir. 2014) ("[D]ismissal for lack of jurisdiction rather than denial on the merits is the appropriate disposition of [defendant's] § 3582(c)(2) motion.").

IT IS THEREFORE ORDERED that Defendant's Motion for Reduction of Sentence [Doc. No. 169] is DISMISSED.

IT IS SO ORDERED this 28th day of April, 2025.



SCOTT L. PALK
UNITED STATES DISTRICT JUDGE